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SERVICE DATE – SEPTEMBER 21, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-600 (Sub-No. 1X)

YAKIMA INTERURBAN LINES ASSOCIATION—ABANDONMENT EXEMPTION—IN  
YAKIMA COUNTY, WA

Decided: September 20, 2006

Yakima Interurban Lines Association (YILA) filed a verified notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a line of railroad known as the Naches Branch, from milepost 2.97 (near Yakima) to milepost 14.26 (near Naches), a distance of approximately 11.29 miles in Yakima County, WA. YILA also sought exemption from the offer of financial assistance (OFA) procedures at 49 U.S.C. 10904. In addition, a request on behalf of Yakima County (County) for issuance of a notice of interim trail use (NITU) pursuant to section 8(d) of the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), was filed with the notice. Notice of the exemption was served and published in the Federal Register on January 19, 2006 (71 FR 3153-54).

On January 24, 2006, the Board's Section of Environmental Analysis (SEA) issued an environmental assessment (EA) assessing the proposed abandonment for public review and comment. The exemption was scheduled to become effective on February 18, 2006, unless stayed pending reconsideration by the Board or unless a formal expression of intent to file an OFA was received. On February 6, 2006, Oregon Pacific & Eastern Railroad Company (OP&E) late-filed a notice of intent to file an OFA.

In a decision served on February 17, 2006, the Board accepted for filing OP&E's late-filed notice of intent to file an OFA and postponed the effective date of the exemption until 10 days after the due date for OP&E's OFA. Also, YILA's request for exemption from the OFA requirements of 49 U.S.C. 10904 was denied, the County's request for issuance of a NITU was held in abeyance pending completion of the OFA process, and seven environmental conditions recommended by SEA were imposed on the proposed abandonment.

By letter filed on March 23, 2006, OP&E filed a request to toll the time period for submission of its OFA and for a protective order. By letter filed on March 27, 2006, however, OP&E sought permission to withdraw its notice of intent to file an OFA.

By decision and notice served on April 5, 2006, the proceeding was reopened, OP&E's request to withdraw its notice of intent to file an OFA was granted, the OFA process was terminated, OP&E's tolling request and request for a protective order were dismissed as moot, and the prior abandonment authorization became effective on the April 5 service date, subject to the environmental conditions imposed in the February 17 decision. Also, as pertinent here, a NITU was issued authorizing the County to negotiate an interim trail use/rail banking agreement with YILA for 180 days, until October 2, 2006, for the 11.29 miles of railroad.

On August 25, 2006, the County filed a motion, with YILA's consent, requesting an extension of the NITU negotiating period for an additional 180 days, until March 31, 2007. The parties state they are diligently pursuing completion of the various steps which must be taken before a railbanking agreement may be finalized and the property transferred by YILA to the County for interim trail use/railbanking. The parties state that an essential first step in the process, which the County is working on, is compliance with one of the environmental conditions imposed in the February 17 decision (section 106 process of the National Historic Preservation Act, 16 U.S.C. 470(f)). Finally, the parties contend that they do not expect the process to be completed earlier than the end of the first quarter of 2007, and they believe an additional 180 days will be needed to complete the necessary steps.

On September 5, 2006, Kershaw Sunnyside Ranches (Kershaw) filed a memorandum in opposition to the motion to extend the negotiating period and a request to dismiss the notice of exemption. Although styled in part as an opposition to the motion to extend, Kershaw's opposition does not address the extension itself and, therefore, provides no reason to deny the request. Rather, Kershaw's arguments raise jurisdictional questions which will be addressed in a subsequent Board decision.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue negotiations by requesting an extension, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, further extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996). Accordingly, the NITU negotiating period will be extended to March 31, 2007.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The County's request for an extension of the NITU negotiating period is granted.
2. The negotiating period under the NITU is extended until March 31, 2007.

3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary